



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/707,733

01/08/2004

Timothy Noel Hentschel

LEXYL.001A

1732

27299 7590 03/15/2010
GAZDZINSKI & ASSOCIATES, PC
16644 WEST BERNARDO DRIVE
SUITE 201
SAN DIEGO, CA 92127

EXAMINER

JOSEPH, TONYA S

ART UNIT

PAPER NUMBER

3628

MAIL DATE

DELIVERY MODE

03/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/707,733	Applicant(s) HENTSCHEL ET AL.	
	Examiner TONYA JOSEPH	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-38 and 59-78 is/are pending in the application.
- 4a) Of the above claim(s) 65-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-38 and 59-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 36-38 have been previously examined. Claim 36 has been amended. No claims have been cancelled. Claims 59-65 have been added. Thus, claims 36-38 and 59-65 are presented for examination.

Response to Arguments

Applicant's arguments with respect to claims 36-38 and 59-65 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 36-37, 59-60, 63 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal et al. U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Ghouri et al. U.S. Pre-Grant Publication No. 2002/0082978 A1 in further view of Norrid U.S. Pre-Grant Publication No. 2003/0061145 A1.

3. As per Claim 36, Moshal teaches populating a database with a plurality of participating bidders (see para. 69 lines 2-8); configuring a plurality of reverse auction parameters (see para. 44 lines 11-16; para. 88 and 89); providing an online form to receive postings from a plurality of potential buyers (see para. 260 and Fig. 12);

Art Unit: 3628

performing a reverse auction in accordance with at least one said reverse auction parameter (see para. 113 lines 4-6); transmitting an offer to at least one of said plurality of potential buyers, wherein said offer is generated from an accepted bid (see para. 253); wherein said reverse auction allows at least one said participating bidder to submit more than one said bid in response to said posting; and (see para. 71 lines 3-7); administrative monitoring application that communicates with said computer database in order to access information associated with said plurality of participating bidders (see para. 81). Moshal does not explicitly teach the method taught by Ghouri providing contact information for a bidding party of said accepted bid to at least one potential buyer to enable direct communication with a posting party of said accepted bid to complete the transaction (see para. 73-75). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Ghouri to provide participant contact. Moshal teaches a plurality of potential buyers. Moshal does not explicitly teach the limitation taught by Norrid providing an administrative monitoring application that monitor the status of commissions associated with a completed hotel reservation (see para. 18-19 and 72).

Examiner Notes: While Ghouri teaches the limitation, "to enable direct communication with a posting party of said accepted bid to complete the transaction", it is merely a statement of intended use and as such is afforded little patentable weight.

4. As per Claim 37, Moshal in view of Ghouri teaches the method of claim 36 as described above. Moshal further teaches wherein at least one bid in said plurality of bids is an automated bid (see para. 55 lines 7-11).

Art Unit: 3628

5. As per Claim 59, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 37 as described above. Moshal further teaches wherein said automated bid comprises said accepted bid and said accepted bid is confirmed through multiple online engines (see para. 71 and 83). Norrid teaches hotel booking engines.

6. As per Claim 60, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 36 as described above. Ghouri further teaches wherein said contact information is not provided for said bidding party until said at least one of said plurality of potential buyers completes a qualification confirmation procedure (see para. 60). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Moshal, Ghouri and Norrid to further include the teachings of Ghouri to maintain the integrity of an auction.

7. As per Claim 63, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 60 as described above. Moshal does not explicitly teach the limitation taught by Ghouri wherein said act of transmitting an offer via said network connection to at least one of said plurality of potential buyers comprises transmitting a bid notification email (see para. 66, 72 and 74). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Moshal, Ghouri and Norrid to further include the teachings of Ghouri to notify a system support group and a dealer.

8. As per Claim 65, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 36 as described above. Moshal further teaches providing a participating bidder information page to at least a portion of said plurality of participating bidders, said

Art Unit: 3628

participating bidder information page sharing information associated with said reverse auction between said at least a portion of said plurality of participating bidders (see para. 260; Fig. 12; para. 44 lines 11-16; para. 88 and 89).

9. Claims 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal et al. U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Ghouri et al. U.S. Pre-Grant Publication No. 2002/0082978 A1 in further view of Norrid U.S. Pre-Grant Publication No. 2003/0061145 A1 and Pathak U.S. Pre-Grant Publication No. 2002/0016760 A1.

10. As per Claim 38, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 36 as described above. Moshal further teaches wherein said plurality of bids includes a first bid and a second bid, wherein said plurality of participating bidders comprises a first bidder and a second bidder (see para. 91), Moshal does not explicitly teach the limitation taught by Pathak wherein said first bid is hidden from said second bidder (see para. 10-12). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Moshal, Ghouri and Norrid to include the teachings of Pathak to preserve bidder confidentiality.

11. Claims 61-62 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal et al. U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Ghouri et al. U.S. Pre-Grant Publication No. 2002/0082978 A1 in further view of Norrid U.S. Pre-Grant Publication No. 2003/0061145 A1 and Official Notice.

12. As per Claims 61-62, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 36 as described above. Moshal does not explicitly teach wherein

Art Unit: 3628

said qualification procedure comprises receiving information associated with a credit card and receiving a telephone call from said at least one of said plurality of potential buyers. Official Notice is taken that qualifying buyers by telephone and by credit card is old and well known. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Moshal, Ghouri and Norrid to include the teachings of Official Notice to verify the identity of a bidder.

13. As per Claim 64, Moshal in view of Ghouri in further view of Norrid teaches the method of claim 36 as described above. Moshal does not explicitly teach wherein said online form is provided on both a parent site and a private label site. Official Notice is taken that offering forms on different websites is old and well known. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Moshal, Ghouri and Norrid to include the teachings of Official Notice to provide greater access to a form.

Applicant's election with traverse of Group I, claims 36-38 and 59-65 in the reply filed on 12/22/2009 is acknowledged. The traversal is on the ground(s) that the subcombinations do not overlap in scope and there would be no search burden on the Examiner. This is not found persuasive because: As an initial matter, contrary to Applicant's assertions, the claim groups do not overlap in scope. In each grouping, there is at least one element that is not described in the other grouping. Claim groups are said to overlap when one group is totally encompassed by another. For example, group I describes an administrative monitoring application while group II describes threshold parameters to determine bidder eligibility, which is not included in group I.

Art Unit: 3628

These two groups do not overlap one another. Secondly, claims classified in the same subclass and in this particular case, 705-5, are not the sole indicator of an Examiner's search burden as subject matter and search classes are not all encompassing.

The requirement is still deemed proper and is therefore made FINAL.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-1361. The examiner can normally be reached on Mon-Fri, 7:30 am-5:00pm First Fridays off.

Art Unit: 3628

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN W HAYES/

Supervisory Patent Examiner, Art Unit 3628